IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2168 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHANABHAI B VAGHELA

Versus

PRESIDENT, SOMNATH KELAVANI MANDAL, JIVANDEEP KELAVANI -

Appearance:

1. Special Civil Application No. 2168 of 1988

MR SHRIMALI FOR MR GIRISH PATEL for Petitioner No. 1

MR RS DALWADI for Respondent No. 1

MR NS DESAI for Respondent No. 1,2

RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 29/06/2004

ORAL JUDGEMENT

The petitioner was originally appointed as a Teacher in Adarsh Vidyalaya, Minawada, Taluka Nadiad, managed by a Trust, but voluntarily resigned on 05/09/1983 before the District Education Officer, on an assurance given by respondent no.1 that he will be appointed as an Asstt. Teacher in the Trust's another school i.e. Pragati Vidyalaya, Kanjoda, Taluka Nadiad. It is the case of the petitioner that thereafter he joined the new school, namely, Pragati Vidyalaya, Kanjoda, Nadiad as a Principal and worked there since then.

2. After working there for about six months, the petitioner found that the appointment of the petitioner was not made in due course and that he was not given an official appointment order. He, therefore, filed an application before the Gujarat Secondary Education Tribunal being Application No.192/1984.

3. The grievance of the petitioner before the Tribunal was two fold. In the first instance, it was his grievance that though he served in respondent no.1's school viz. Adarsh Vidyalaya, Minawada from June 1981 to September 1983, he was not paid the due salaries, excepting a paltry amount of Rs.1500/- as ad hoc payment. The second grievance of the petitioner was that he was induced into giving resignation from Adarsh Vidyalaya at Minawada by false assurance given by respondent no.1 that he would be taken up as an Asstt. Teacher in respondent no.1's another school viz. Pragati Vidyalaya at Kanjoda. Therefore, he had prayed that his resignation which was obtained by false inducement, should be considered as ineffective and he should be considered to be in service in Adarsh Vidyalaya at Minawada. In the alternative, he has prayed that he be considered as having been appointed in Pragati Vidyalaya at Kanjoda w.e.f. 06/09/83 and that he be given salary from that school and be continued in that school at Kanjoda. After considering the evidence on record as well as the other documents produced before it, the Tribunal observed as under;

3.1 "The writing in the resignation at Ex.C. also does not show that the resignation was given under duress. However, the case of the applicant is that the resignation was given because of false inducement. If some false inducement is there by some one and the applicant is credulous enough to accept what has been stated to him by some one and he resigns, then the resignation cannot be said to be involuntary. The resignation is given by him voluntarily on some

understanding which now he says has been broken by the other side. If that is so, at the most he can claim that he was cheated by the other side. He can take appropriate proceedings for that. But so far as the resignation is concerned, if the resignation is in terms of Section 36(4) and when the D.E.O. has put his endorsement, it cannot be said that the resignation requires to be quashed and set aside as involuntary. Furthermore, after the resignation much water has passed under the bridge. The resignation is dt. 05.09.83. Thereafter, according to his own deposition he joined some other school, he worked there for about six months and thereafter realised that he was not given an official order of appointment and he was told that he would not come to the school. In other words, the resignation is not only voluntary but was acted upon by the applicant himself. In these circumstances, if after six or seven months of resignation if the applicant chooses to file an application before this Tribunal to get the resignation annulled, this Tribunal cannot help. Under these circumstances, the resignation dt. 05.09.83 at Ex.C is considered as valid and effective and the services of the applicant are validly terminated by that resignation from the Adarsh Vidyalaya at Minawada."

3.2 The Tribunal did not accept the case of the petitioner about non-payment of salary, but, directed the management to make payment of salary to the petitioner for the period from 01/07/82 to 31/08/83, after deducting Rs.1,500/- which was already paid to the petitioner.

4. The petitioner thereafter filed a Review Application under Section 38 of the Gujarat Secondary Education Act, 1972, being Application No.3383/1987 before the Tribunal, which was also rejected by the Tribunal by order dated 02/09/87.

5. I have heard Mr.Shrimali learned advocate appearing for the petitioner. Mr.Shrimali has contended that the petitioner was induced by the management and therefore, the resignation tendered by him on 05/09/83 before the District Education Officer is not voluntary and was given under duress. Mr.Shrimali has also contended that the order of the Tribunal is not in accordance with law, as the contentions raised by the petitioner in para 10 of the petition have not been taken

into consideration by the Tribunal.

6. I have gone through the petition, the affidavit-in-reply and the judgment of the Tribunal. From the records, it seems that the petitioner himself had approached the District Education Officer on 05/09/1983 and had tendered his resignation. The District Education Officer, after verifying the facts from the petitioner himself, accepted his resignation. Thereafter, the petitioner joined the other School and worked as a Principal of that school for about six months. After the lapse of about six months, the petitioner realised that he was not recruited regularly and was told by the management not to come to school. Therefore, his services came to be terminated. Realising the same, the petitioner approached the Tribunal by way of the above application, but the same came to be rejected as aforesaid.

7. Mr.Shrimali has relied upon a decision in the case of Popatlal Naranbhai Patel V/s. Navchetan High School Trust & Ors. reported in 1983 G.L.H. 203 wherein this Court has held that a District Education Officer has not to act merely as a post-office but has to function as a statutory authority and has to ascertain whether the resignation is the outcome of the free consent of the person tendering the same.

8. In the present case, the petitioner himself has gone before the Authority and has tendered his resignation. The District Education Officer, after verifying the facts from the petitioner himself, accepted his resignation. Therefore, it cannot be said that the District Education Officer has not acted with due diligence. Even otherwise, when the Tribunal has come to a certain finding, relying on the evidence before it, then this Court under Article 227 of the Constitution of India, cannot interfere with the said finding, unless it is shown that the evidence and the conclusion which it had arrived at, is perverse and contrary to the evidence on record. Mr.Shrimali was not in a position to point out that any illegality was committed by the Tribunal or that any finding of the Tribunal was perverse. In that view of the matter, the order passed by the Tribunal is just and proper.

9. For the foregoing reasons, this petition is dismissed with no orders as to cost. Rule discharged. Interim relief, if any, stands vacated.

(K. S. Jhaveri, J.)

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